Virginia State Board of Pharmacy *v.* Virginia Citizens Consumer Council, Inc.

The commonwealth of Virginia had a law which stopped pharmacists from advertising prescription drug prices, those who did would be guilty of unprofessional conduct. Across the state drug prices varied, the Law was challenged by and individual consumer, and consumer groups. They brought the suit into the United States District Court for the Eastern District of Virginia. The Public Citizens Litigation Group argued and eventually won the case before the Supreme court. Justice Blackmun began his opinion by giving a swift overview of the Virginia pharmacy regulation statutes. After that he explained that previous cases had been based on economic due process under the fourteenth admendment instead of on free speech grounds. Justice Blackmun argued on how this case was not only concerned about commercial regulation, but also the free flow of information. Blackmun also distinguished commercial speech from unprotected categories like fighting words and obscenity. He then explained on how this is necessary for people like the poor, elderly and infirm needed access to this information to make decisions about how to get prescriptions filled without spending more than needed. For people like this in need, Justice Blackmun reasoned, it was more of a convenience. He also stressed the importance of advertising prices in a free market economy, because they serve the citizens to make private economic decisions. The commonwealth of Virginia justified its passing of the regulation on maintaining the professionalism of pharmacists, declaring that aggressive price competition among pharmacists would make it harder for pharmacists to provide proper service. Blackmun responded that this was both necessary and within the power of the police departments, the statute promoted consumers’ ignorance. Effectively keeping them in the dark about prescription drug prices. Blackmun then dismissed this rationale as paternalistic, claiming that if consumers had enough access to information regarding drug prices, it would only help them in their decisions about choosing a prescription drug supplier.

Chief Justice Burger concurred on large practical grounds. Saying that since 95% of prescriptions drugs being filled required prepackaged medications, being prepared by their manufacturers to be sold immediately. Those drugs had a large enough market to be sold in that way, so the state’s justifications based on being professional carried little to no weight. Burger then focused on limiting Blackmun’s majority opinion, saying that it did not apply to professional services such as medicine or law.

Justice Stewart wrote a concurrence explaining how the holding of this did not limit the State’s ability to restrict deceptive or false advertising. He stated various libel cases to demonstrate that although the press cannot be harshly restricted for fear that the journalists may sometimes get their facts wrong. An advertiser is a lot more likely to have the knowledge if the publishing is true. Therefore, the states should have more control on the content of advertisements for the veracity of their content.

Justice Rehnquist was the only one to object, he felt like this was overextension of the first amendment doctrine. He used one of the slippery slope argument type to describe the consequences of this decision. More specifically he worried that this would allow the promotion of consumption of liquor, cigarettes and other products which most states traditionally try to discourage. He concluded by arguing that the majority has not only failed to accord proper weight to the judgment of the Virginia State Legislature, but that the protection of the First amendment should be limited to political and social issues.

This case argued about how if advertising prescription drug prices where a violation of “Commercial speech” in the First amendment.

This case is important because it cleared up a lot of what was and was not a violation of the First amendment. Because of this case professional pharmacies are now able to advertise prescription drug prices. It was able to help a lot of the poor, elderly, and the infirm on the accessibility they got to compare drug prices without having to go to each individual store.

I believe that the Supreme Court made the right decision, I think that they cleared up a lot of issues going on, and what company’s cant advertise.

Thank you.